IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2904 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE TEXTILE CORPN

Versus

JIVRAJIBHAI RAGHVBHAI

Appearance:

1. Special Civil Application No. 2904 of 1995

MR KN RAVAL for Petitioner No. 1

MS PJ DAVAWALA for Petitioner No. 1

MR KV GADHIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 20/01/2004

ORAL JUDGEMENT

Heard learned advocate Ms. P.J.Davawala for petitioner and learned advocate Mr. K.V.Gadhia appearing

on behalf of respondent No.1

2. In the present petition, petitioner has challenged the order passed by the Labour Court, Ahmedabad in Recovery Application No. 5132 of 1986 dated 2.3.1995 wherein, Labour Court has granted Rs.32,490.00 being a retrenchment compensation in favour of the workman.

3. Learned advocate Ms. P.J.Davawala appearing on behalf of the petitioner has submitted that Recovery Application under Section 33(c)(2) of the Industrial Disputes Act, 1947 is not maintainable and before that prior adjudication is necessary. Here, in this case, there is no prior adjudication and therefore, Labour Court having no jurisdiction to decide the matter and therefore Labour Court has committed gross error in passing such order against the petitioner. She also submitted that Labour Court has committed error in not appreciating the clear provisions of the Nationalised Act and, more particularly, provisions of Section 11 of the said Nationalised Act. The order of Labour Court is contrary to the expressed provisions of Section 11 of the said Act which, inter alia, stipulates that the person whose services are terminated on his superannuation before the designated date would not be entitled to payment of compensation for retrenchment. Therefore, she submitted that Labour Court has committed gross error in passing order in favour of the workman.

4. Learned advocate Mr. K.V.Gadhia appearing on behalf of respondent workman has submitted that workman was working in the Mill for more than 38 years and he tendered resignation on 20.2.1986 and accordingly, gratuity amount has been paid to the workman. Therefore, on the same basis, the workman is entitled retrenchment compensation from the petitioner. He also submitted that workman has deposed before the Labour Court vide Exhibit-11 and detail has been given by the workman that he was appointed in the year 1948 in weaving department as line jobber and he was a permanent employee. The Mill was closed in the year 1984 and thereafter it was restarted in the year 1986. Therefore, according to the government proclamation, the workman who wants to relieve from the job then he has to tender the resignation, and then he will be entitled statutory benefits like gratuity as well as retrenchment compensation. The workman has given resignation in February 1986 and at that occasion he was aged 56 years and, he has not received any notice from the Mill about retirement, and, therefore, considering his birth year 1929 and, when he was

appointed in the Mill he was aged about 19 years and considering that, ultimately, Labour Court has considered 38 years service and has passed the order in favour of the respondent workman. On behalf of the petitioner one Pankaj Dashratlal Patel was examined and according to his evidence, if there is a dispute about the age of the workman then they are demanding certain documents from the workman. Accordingly same has to be filled up in the provident fund form. The provident fund form has been examined by the Labour Court and ultimately from the provident fund form the date of year has been found out 1928 and according to that, in the year 1986 the workman was aged about 58 years and considering the age of retirement in Mills 60 years, and if the workman's physical condition is good then he is entitled to continue in service up to 62 years. Therefore, Labour Court has come to conclusion that at the time when the resignation was tendered by the workman, he was aged 58 years and not retired and therefore, he is entitled the benefit. Therefore, Mr. K.V.Gadhia has submitted that the Labour Court has rightly passed an order in favour of the workman.

5. I have considered the submissions made by both the learned advocates. Learned advocate Mr. P.J.Davawala has submitted that Section 11 sub-Section 1 (4)(a)(i) which is relevant at the time of issuing the resignation, if the workman has already reached the age of superannuation on the designated date, would not be entitled the payment of retrenchment compensation. This aspect has been examined by the Labour Court in para 3 and Labour Court has come to conclusion that, on the designated date workman had not completed 62 years service and not reached the age of superannuation. Before the Labour Court workman was examined and thereafter the witness of the petitioner was examined and then Labour Court considered the merits and relevant provisions of Section 11(a) sub-Section 4(a)(i) and ultimately Labour Court has come to conclusion that looking to the PF record, the workman's date of birth year has been found 1928 and at the time when he tendered resignation in the year 1986 he was about 58 years, therefore, he was not reached the age of superannuation 60 years. Therefore, this aspect has been considered properly by the Labour Court and ultimately Labour Court has granted the retrenchment compensation as the workman is entitled the same benefit according to law and Labour Court has rightly rejected the contention raised by the petitioner and, at the time when the resignation was tendered by the workman, he was aged about 58 years.

6. I have perused the order passed by the Labour Court and also considered the observations made by the Labour Court. According to my opinion, the documents which have been appreciated by the Labour Court, this Court cannot reappreciate the same and, according to my opinion, Labour Court has rightly granted the benefit in favour of the workman and these are the fact findings given by the Labour Court. Relying upon the evidence lead before the Labour Court, this Court, while exercising power under Article 227 of the Constitution of India, cannot reappreciate the same and cannot act as an appellate authority. Even Labour Court has not committed any procedural irregularity which require interference by this Court. The power of this Court as a judicial review has been decided by the Apex Court in number of cases. Recently, the Apex Court has considered this aspect in the case of SYED T.A. NAQSHBANDI AND OTHERS v. STATE OF JAMMU & KASHMIR AND OTHERS, (2003) 9 SCC 592. Head Note 'H' is quoted as under:

> "Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such, Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions. Grievances must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. Unless the exercise of power is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justiciable issue before courts."

7. It is also necessary to note one more aspect that an identical case was filed by the present petitioner in Special Civil Application No. 9889 of 2002 which has been decided by this Court on 9.4.2002 where same question was examined by this Court and this Court has dismissed the petition and confirmed the order passed by the Labour Court granting the retrenchment compensation in favour of the workman. Therefore, considering this fact, according to my opinion, Labour Court has not committed any error in granting the benefit in favour of

the workman. Therefore, there is no substance in the present petition and hence the present petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

8. However, the registry is directed to pay the amount of Rs.15000 to the respondent workman. If any interest is not withdrawn by the workman upon this amount, then same may be paid to the workman.

9. Learned advocate Mr. K.V.Gadhia has submitted that respondent has died on 12.8.2001, therefore, amount may be paid to the widow Jamnaben Jivraj Patel. Therefore, registry is directed to pay this amount of Rs. 15000 with accrued interest, if any, not withdrawn by the respondent, to the widow Smt. Jamnaben Jivraj Patel who will be identified by learned advocate Mr. K.V.Gadhia.

(H.K.Rathod,J)
Jayanti*